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DRAFTED BY: L:CNIX:MS

APPROVED BY: IO:GWARD

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AMEMBASSY LAGOS IMMEDIATE

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AMEMBASSY PRETORIA IMMEDIATE

AMEMBASSY ADDIS ABABA IMMEDIATE

C O N F I D E N T I A L STATE 202027

E.O. 12356: DECL: OADR

TAGS: TZ, US, TS, KE, CG, NI, DJ

SUBJECT: RWANDA WAR CRIMES

UNITED STATES DEPARTMENT OF STATE
 REVIEW AUTHORITY: CHARLES L DARIS
 DATE/CASE ID: 15 DEC 2005 200103014

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REF: A. STATE 198848 B. USUN NEW YORK 3089 (NOTAL)

1. CONFIDENTIAL -- ENTIRE TEXT.

2. BEGIN SUMMARY AND ACTION REQUEST: POST IS ASKED TO ADVISE P-5 LEGAL ADVISERS OF U.S. SUPPORT OF AN INTERNATIONAL TRIBUNAL TO PROSECUTE VIOLATIONS OF THE GENOCIDE CONVENTION AND OTHER GRAVE VIOLATIONS OF INTERNATIONAL HUMANITARIAN LAW IN RWANDA. WHILE WE AGREE WITH THE RUSSIAN LEGAL ADVISER THAT THE RWANDA AND YUGOSLAV EFFORTS SHOULD SHARE COMMON RESOURCES AND REGISTRY STAFF, POST SHOULD ADVISE THAT THE USG WOULD LIKE THE TWO OPERATIONS TO ALSO SHARE A COMMON STATUTE, TRIAL AND APPELLATE CHAMBERS AND CHIEF PROSECUTOR TO ENSURE PARITY AND UNIFORMITY OF LAW. POST IS ALSO ASKED TO ENCOURAGE P-5 TO BEGIN IDENTIFYING PROSECUTORS AND JUDGES WHO COULD SERVE IN THE RWANDA WAR CRIMES EFFORT. POST SHOULD ASCERTAIN WHETHER THE P-5 WOULD SUPPORT A SC RESOLUTION CALLING ON STATES, CONSISTENT WITH THEIR DOMESTIC LEGAL AUTHORITIES AND THE OBJECTIVES OF THE

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GENOCIDE CONVENTION AND OTHER INTERNATIONAL AGREEMENTS, TO DETAIN, FOR A REASONABLE PERIOD PENDING PROSECUTION, PERSONS IN THEIR TERRITORIES AGAINST WHOM THERE IS CREDIBLE EVIDENCE THAT THEY HAVE COMMITTED ATROCITIES.
END SUMMARY AND ACTION REQUEST.

3. BEGIN TALKING POINTS

-- WE ARE PLEASED THAT THE P-5 LEGAL ADVISERS ARE BEGINNING DISCUSSIONS ON THE ESTABLISHMENT OF AN INTERNATIONAL TRIBUNAL TO PROSECUTE THOSE WHO HAVE COMMITTED ATROCITIES IN RWANDA.

-- THE U.S. STRONGLY SUPPORTS THE ESTABLISHMENT OF AN INTERNATIONAL TRIBUNAL. WE BELIEVE THAT SUCH ACCOUNTABILITY IS IMPORTANT TO DETER FUTURE ATROCITIES AND TO REMOVE THE PERPETRATORS OF ATROCITIES FROM THE REGION. WE ALSO BELIEVE IT IS IMPORTANT THAT ATROCITIES IN RWANDA RECEIVE A RESPONSE COMMENSURATE WITH THAT GIVEN TO THE FORMER YUGOSLAVIA.

-- WE ALSO BELIEVE A TRIBUNAL WOULD ASSIST IN POLITICAL RECONCILIATION IN RWANDA IN THAT OFFENDERS WOULD BE DEALT

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WITH BY AN IMPARTIAL OUTSIDE BODY RATHER THAN BY ANY OF
THE PARTIES TO THE RECENT CONFLICT.

-- IN THIS REGARD, WE BELIEVE IT IS IMPORTANT FOR THE
COMMISSION OF EXPERTS FOR RWANDA TO COMPLETE ITS WORK
EXPEDITIOUSLY, HOPEFULLY WELL BEFORE THE FOUR MONTH
DEADLINE. IT IS ESSENTIAL TO PROCEED WITHOUT UNNECESSARY
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DELAY IN ESTABLISHING AN INTERNATIONAL TRIBUNAL. WE URGE
ALL OF YOU TO PUBLICLY SUPPORT QUICK RESOLUTION OF THE
COMMISSION'S WORK, PARTICULARLY IN LIGHT OF THE SPECIAL
RAPPORTEUR'S FINDINGS AND CALL FOR THE ESTABLISHMENT OF A
TRIBUNAL.

-- IN ESTABLISHING A TRIBUNAL, WE BELIEVE IT IS IMPORTANT
TO KEEP SEVERAL GOALS IN MIND. FIRST, THE RWANDA
SITUATION SHOULD BE GIVEN EQUAL STATUS AND ATTENTION AS
THE YUGOSLAV SITUATION. AT THE SAME TIME, IT SHOULD NOT
UNDERMINE THE YUGOSLAV EFFORT IN ANY WAY OR CREATE THE
PERCEPTION THAT THE YUGOSLAVIA TRIBUNAL IS GETTING
SHORT-SHRIFT.

-- IN ADDITION, WE BELIEVE IT IS CRITICAL FOR
INTERNATIONAL LEGITIMACY AND JUDICIAL FAIRNESS TO BUILD A
COHERENT AND UNIFORM BODY OF LAW IN THIS AREA AND AVOID
SEPARATE, POTENTIALLY INCONSISTENT BODIES OF PRECEDENT.

-- TO ACCOMPLISH THESE GOALS, OUR PRESENT THINKING IS THAT
THE JURISDICTION OF THE YUGOSLAV TRIBUNAL SHOULD BE
EXPANDED TO INCLUDE RWANDA. WHILE WE AGREE WITH THE
RUSSIAN LEGAL ADVISER THAT A RWANDA TRIBUNAL SHOULD SHARE
FACILITIES, REGISTRY STAFF AND OTHER RESOURCES WITH THE
YUGOSLAV TRIBUNAL, WE ALSO BELIEVE THAT THE TWO OPERATIONS
SHOULD SHARE A COMMON STATUTE AND COMMON TRIAL AND
APPELLATE CHAMBERS. A SEPARATE PROSECUTORIAL STAFF TO
DEAL WITH RWANDA AND NEW TRIAL CHAMBERS WOULD BE NEEDED TO
ENSURE THAT THE YUGOSLAV EFFORT IS NOT JEOPARDIZED.

-- WE BELIEVE THIS APPROACH WOULD MAXIMIZE ECONOMIES OF
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SCALE AND AVOID RE-CREATING THE WHEEL. IN ADDITION, BY HAVING THE RWANDA AND YUGOSLAV TRIBUNALS SHARE A COMMON STATUTE, TRIAL AND APPELLATE CHAMBERS, WE WOULD AVOID THE CREATION OF SEPARATE AND INCONSISTENT BODIES OF PRECEDENT, WHICH COULD UNDERMINE THE FORCE AND LEGITIMACY OF THE RULE OF LAW THE UN IS SEEKING TO ESTABLISH. WE ALSO WOULD AVOID THE DELAYS INHERENT IN CREATING AN ENTIRELY SEPARATE JUDICIAL BODY. THERE WOULD ALSO BE UTILITY IN HAVING A COMMON SET OF RULES OF EVIDENCE AND PROCEDURE. (FYI: WE UNDERSTAND JUDGE CASSESE IS IN FAVOR OF THIS APPROACH).

-- WHILE WE AGREE THAT THE PROSECUTORIAL STAFFS SHOULD REMAIN SEPARATE, WE THINK IT MAY MAKE SENSE TO HAVE THE TWO OPERATIONS OVERSEEN BY A SINGLE CHIEF PROSECUTOR. THIS WOULD ENSURE THAT THE GENERAL PHILOSOPHY AND COMMITMENT OF THE TWO EFFORTS IS COMMENSURATE WHILE PRESERVING, THROUGH SEPARATE STAFFS, THE DISTINCT AND IMPORTANT REGIONAL CONTEXTS IN WHICH THE ATROCITIES OCCURRED.

-- FURTHER, WE NOW HAVE IN PLACE AN EXCELLENT CHIEF PROSECUTOR (WHO ALSO HAPPENS TO BE FROM AN IMPORTANT AFRICAN COUNTRY) AND USING HIM IN THIS FASHION WOULD AVOID ANOTHER LONG AND POSSIBLY CONTENTIOUS SEARCH FOR ANOTHER CHIEF PROSECUTOR. (FYI: GOLDSSTONE HAS INDICATED THAT HE IS READY TO ASSUME RESPONSIBILITY FOR BOTH OPERATIONS). THERE WOULD, HOWEVER, BE A NEED FOR A STRONG DEPUTY PROSECUTOR TO MANAGE THE RWANDA EFFORT, AND THE RWANDA STAFF WOULD UNDOUBTEDLY HAVE A MORE FRANCOPHONE CIVIL LAW CHARACTER AND INVOLVEMENT FROM NON-WESTERN STATES THAN THE YUGOSLAV TEAM.

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-- WE WOULD BE INTERESTED IN YOUR VIEWS IN THIS MATTER, AS WELL AS ANY RECOMMENDATIONS YOU MAY HAVE FOR PROSECUTORS AND JUDGES WHO COULD SERVE IN A RWANDA TRIBUNAL.

-- IN THE INTERIM, BEFORE A TRIBUNAL IS OPERATIONAL, IT IS IMPORTANT THAT PERPETRATORS OF ATROCITIES DO NOT FLEE AND THEREBY ESCAPE THE REACHES OF THE COURT.

-- TO AVOID THIS, WE BELIEVE ALL STATES SHOULD BE WILLING, CONSISTENT WITH THEIR DOMESTIC LAWS AND THE OBJECTIVES OF THE GENOCIDE CONVENTION AND OTHER INTERNATIONAL AGREEMENT, TO DETAIN FOR A REASONABLE TIME PERIOD PERSONS IN THEIR

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TERRITORIES AGAINST WHOM THERE IS CREDIBLE EVIDENCE THAT THEY COMMITTED ATROCITIES, PENDING PROSECUTION. TANZANIA AND ZAIRE CURRENTLY HAVE SUSPECTED WAR CRIMINALS IN CAMPS AND ELSEWHERE IN THEIR TERRITORIES. OTHER STATES HAVE FOUND OR MAY FIND THEMSELVES CONFRONTED WITH SIMILAR PERPETRATORS.

-- WE WOULD BE INTERESTED IN DISCUSSING FURTHER -- PERHAPS IN A SEPARATE MEETING -- WHETHER IT MAKES SENSE TO ADOPT A SC RESOLUTION CALLING ON STATES TO COOPERATE WITH THE COMMISSION OF EXPERTS, INCLUDING DETAINING PERPETRATORS, PARTICULARLY THOSE IDENTIFIED BY THE COMMISSION AND THE SPECIAL RAPPORTEUR, FOR A REASONABLE TIME PERIOD, PENDING PROSECUTION.

-- SUCH A RESOLUTION WOULD ENCOURAGE SURROUNDING STATES TO DETAIN SUSPECTS, THEREBY ENSURING THAT CREDIBLE SUSPECTS DO NOT AVOID PROSECUTION. IT ALSO MIGHT GIVE THE PARTIES

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TO THE CONFLICT GREATER ASSURANCE THAT AN IMPARTIAL, OUTSIDE BODY WILL ADJUDICATE VIOLATIONS OF INTERNATIONAL HUMANITARIAN LAW IN THE NEAR TERM, THEREBY OBVIATING THE NEED FOR LOCAL, POLITICALLY CHARGED TRIALS.

-- WHAT ARE YOUR VIEWS IN THIS REGARD?

-- WE ARE PLEASED THAT INTERNATIONAL SUPPORT FOR A RWANDA TRIBUNAL IS BUILDING. WE WOULD BE HAPPY TO DISCUSS THESE AND OTHER TRIBUNAL-RELATED MATTERS FURTHER.

4. PLEASE SLUG RESPONSES FOR L - CRYSTAL NIX, L/UNA - EVAN BLOOM AND USUN/W - DAVID SCHEFFER. CHRISTOPHER

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